

**Title of Regulation: 12VAC35-230. Operation of the Individual and Family Support Program (adding 12VAC35-230-10 through 12VAC35-230-110).**

**Statutory Authority:** § 37.2-203 of the Code of Virginia.

**Effective Dates:** January 15, 2013, through January 14, 2014.

**Preamble:**

*Chapter 3 of the 2012 Virginia Acts of Assembly (Budget Bill Item 315 V.3) requires the Department of Behavioral Health and Developmental Services to promulgate regulations to establish an Individual and Family Support Program. The legislation states that the department shall promulgate such regulations within 280 days or less from the enactment date of the act. The enactment date was June 11, 2012. Therefore, this is an "emergency situation" according to § 2.2-4011) of the Administrative Process Act.*

*The proposed emergency regulations will establish an Individual and Family Support Program (IFSP) for individuals with ID/DD who are on the waiting list for either an ID or a DD waiver. This program is required by the DOJ settlement agreement, which also stipulates that this program will be operational before the end of FY 13.*

*This emergency regulation establishes a support program for individuals who are living in their own homes or a family home and are on the statewide waiting list for Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Services (IFDDS) Medicaid Waiver and the family members who are supporting these individuals. Establishment of this program is required by a recent agreement signed between the Commonwealth and the Department of Justice. This agreement specifies the specific number of individuals to be served annually by this program.*

**CHAPTER 230**

**OPERATION OF THE INDIVIDUAL AND FAMILY SUPPORT PROGRAM**

**12VAC35-230-10. Definitions.**

**The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:**

**"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.**

**"Department" means the Department of Behavioral Health and Developmental Services.**

**"Developmental disability" means a severe, chronic disability of an individual that:**

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

2. Is manifested before the individual attains age 22;

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic self-sufficiency; and

5. Reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, individualized supports or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. (42 USC § 15002)

"Family member" means an immediate family member of an individual receiving services or the principal caregiver of that individual. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the individual receiving services. (§ 37.2-100 of the Code of Virginia)

"Individual and Family Support" means an array of individualized items and services that are intended to support the continued residence of an individual with intellectual or developmental disabilities (ID/DD) in his own or the family home.

"Intellectual disability" or "ID" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (§ 37.2-100 of the Code of Virginia)

#### **12VAC35-230-20. Program description.**

A. The Individual and Family Support Program assists individuals with intellectual disability (ID) or developmental disabilities (DD) and their family members to access needed person-centered and family-centered resources, supports, services and other assistance as approved by the department. As such, Individual and Family Support Program funds shall be distributed directly to the requesting individual or family member or a third party designated by the individual or family member.

B. The overall objective of the Individual and Family Support Program is to support the continued residence of an individual with intellectual or developmental disabilities in his own home or the family home, which include the home of a principal caregiver.

C. Individual and Family Support Program funds shall not supplant or in any way limit the availability of services provided through a Medicaid Home and Community-Based Waiver, Early and Periodic Screening, Diagnosis and Treatment, or similar programs.

**12VAC35-230-30. Program eligibility requirements.**

Eligibility for Individual and Family Support Program funds shall be limited to individuals who are living in their own or a family home and are on the statewide waiting list for the Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Services (IFDDS) Medicaid Waiver and family members that are assisting those individuals.

**12VAC35-230-40. Program implementation.**

A. Individual and Family Support Program funds shall be limited by the amount of funds allocated to the program by the General Assembly. Department approval of funding requests shall not exceed the funding available for the fiscal year.

B. Based on funding availability, the department shall establish an annual individual financial support limit, which is the maximum annual amount of funding that can be provided to support an eligible individual during the applicable fiscal year.

C. Individual and Family Support Program funds may be provided to individuals or family members in varying amounts, as requested and approved by the department, up to the established annual individual financial support limit.

D. On an annual basis, the department shall announce Individual and Family Support Program total funding availability and the annual individual financial support limit for the applicable fiscal year. This announcement shall include a summary of covered services, the application, and the application review criteria.

E. Individuals and family members may submit applications for Individual and Family Support Program funding as needs arise throughout the year. Applications shall be considered by the department on a first-come, first-serve basis until the annual allocation appropriated to the program by the General Assembly for the applicable fiscal year has been expended.

F. Individuals and their family members may apply for Individual and Family Support Program funding each year and may submit more than one application in a single year; however, the total amount approved during the year shall not exceed the annual individual financial support limit.

**12VAC35-230-50. Covered services and supports.**

Services and items funded through the Individual and Family Support Program are intended to support the continued residence of an individual in his own or the family home and may include:

1. Professionally provided services and supports, such as respite, transportation services, behavioral consultation, and behavior management;
2. Assistive technology and home modifications, goods, or products that directly support the individual;
3. Temporary rental assistance or deposits;
4. Fees for summer camp and other recreation services;
5. Temporary assistance with utilities or deposits;
6. Dental or medical expenses of the individual;
7. Family education, information, and training;
8. Peer mentoring and family-to-family supports;
9. Emergency assistance and crisis support; or
10. Other direct support services as approved by the department.

**12VAC35-230-60. Application for funding.**

A. Eligible individuals or family members who choose to apply for Individual and Family Support Program funds shall submit a completed application to the department.

B. Completed applications shall include the following information:

1. A detailed description of the services or items for which funding is requested;
2. Documentation that the requested services or items are needed to support the continued residence of the individual with ID/DD in his own or the family home and no other public funding sources are available;
3. The requested funding amount and frequency of payment; and
4. A statement in which the individual or family member:
  - a. Agrees to provide the department with documentation to establish that the requested funds were used to purchase only approved services or items; and

b. Acknowledges that failure to provide documentation that the requested funds were used to purchase only approved services or items may result in recovery of such funds and denial of subsequent funding requests.

C. The application shall be signed by the individual or family member requesting the funding.

**12VAC35-230-70. Application review criteria.**

Upon receipt of a completed application, the department shall:

1. Verify that the individual is on the statewide Medicaid ID or IFDDS Waiver waiting list;

2. Confirm that the services or items for which funding is requested are eligible for funding in accordance with 12VAC35-230-50;

3. Determine that the services or items for which funding is requested are needed to support the continued residence of the individual with ID/DD in his own or the family home;

4. Determine that other public funding sources have been fully explored and utilized and are not available to purchase or provide the requested services or items;

5. Evaluate the cost of the requested services or items; and

6. Consider past performance of the individual and family members regarding compliance with this chapter.

**12VAC35-230-80. Funding decision-making process.**

A. Applications may be approved at a reduced amount when the amount requested exceeds a reasonable amount as determined by department staff as being necessary to purchase the services or items.

B. Applications shall be denied if the department determines that:

1. The service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-50;

2. The request exceeds the maximum annual individual financial support limit for the applicable fiscal year;

3. Other viable public funding sources have not been fully explored or utilized;

4. The requesting individual or family member has not used previously received Individual and Family Support Program funds in accordance with the department's written notice approving the request or has failed to comply with these regulations; or

5. The total annual Individual and Family Support Program funding appropriated by the General Assembly has been expended for the applicable fiscal year.

C. The department shall provide a written notice to the individual or family member who submitted the application indicating the funding decision.

1. Approval notices shall include:

a. The services, supports, or other items for which funding is approved;

b. The amount and timeframe of the financial allocation;

c. The expected date that the funds should be released; and

d. Financial expenditure documentation requirements and the date or dates by which this documentation shall be provided to the department.

2. For applications where funding is denied or approved at a reduced amount, the department's notice shall state the reason or reasons why the requested services, supports, or other items were denied or were approved at a reduced amount and the process for requesting the department to reconsider its funding decision.

#### **12VAC35-230-90. Requests for reconsideration.**

A. Individuals or family members who disagree with the determination of the department may submit a written request for reconsideration to the commissioner, or his designee, within 30 days of the date of the written notice of denial or approval at a reduced amount.

B. The commissioner, or his designee, shall provide an opportunity for the person requesting reconsideration to submit for review any additional information or reasons why the funding should be approved as originally requested.

C. The commissioner, or his designee, after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify all involved parties in writing. The commissioner's decision shall be binding.

D. Applicants may obtain further review of the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

**12VAC35-230-100. Post-funding review.**

A. Utilization review of documentation or verification of funds expended may be undertaken by department staff. Reviews may include home visits to view items purchased or services delivered.

B. Individuals and family members receiving Individual and Family Support Program funds shall permit the department representatives to conduct utilization reviews, including home visits.

C. Individuals and family members receiving Individual and Family Support Program funds shall fully cooperate with such reviews and provide all information requested by the department.

D. Failure to use funds in accordance with the department's written notice or provide documentation that the funds were used to purchase only approved services or items may result in recovery of such by the department.

**12VAC35-230-110. Termination of funding for services, supports, or other assistance.**

Funding through the Individual and Family Support Program shall be terminated when the individual is enrolled in the ID or IFDDS waiver or if approved funds are used for purposes not approved by the department in its written notice. Any funds approved, but not released, will be forfeited in such circumstances.